

**VOLUNTARY CLEANUP CONTRACT
06-5460-NRP**

**IN THE MATTER OF
FORMER CENTRAL CORRECTIONAL INSTITUTE SITE, RICHLAND COUNTY
and
BEACH CANALSIDE, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Beach CanalSide, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2005), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the former Central Correctional Institute Site located in the southwest quadrant of the intersection of Blanding Street and Williams Street in Columbia, South Carolina. A legal description of the Property is attached hereto as Appendix A. The Property specifically includes approximately 27 acres, and is bounded generally by Blanding Street to the north, Williams Street to the east, Hampton Street to the south and Columbia Canal to the west. The terms and conditions of this Contract shall be consistent with the "Information and Certification" submitted January 9, 2006 by Beach CanalSide, LLC, which is incorporated into this Contract and attached as Appendix B.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

- A. "Beach" shall mean Beach CanalSide, LLC.
- B. "Bona Fide Prospective Purchaser" shall mean a person, or a tenant of that person, who acquires ownership of a facility after the date of enactment of the Brownfields Amendments (January 11, 2002), and by a preponderance of the evidence establishes the following:
 - a. Disposal at the facility occurred prior to acquisition;

- b. The person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in CERCLA Section 101(35)(B);
- c. The person provides all legally required notices with respect to the hazardous substances found at the facility;
- d. The person exercises “appropriate care” with respect to the hazardous substances found at the facility by taking “reasonable steps” to:
 - i. Stop any continuing releases;
 - ii. Prevent any threatened future release;
and
 - iii. Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance;
- e. The person provides full cooperation and access to the facility to those authorized to conduct response actions;
- f. The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control;
- g. The person complies with any information request or administrative subpoena under CERCLA; and
- h. The person is not potentially liable for response costs at the facility or “affiliated” with any such person through:
 - i. Direct or indirect familial relationship, or
 - ii. Any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or

financing title or by contracts for sale of goods and services).

- C. "Contract" shall mean this Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control.
- E. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.
- F. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- G. "Non-Responsible Party" shall mean any party which is neither:

- a. A responsible party at the time the voluntary cleanup contract is signed, nor
 - b. A parent, subsidiary of, or successor to a responsible party. Non-Responsible Parties may include lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, and subsequent holders of a security interest.
 - c. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- H. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- I. "Property" shall mean the approximate 27 acres located in the southwest quadrant of the intersection of Blanding Street and Williams Street in Columbia, South Carolina that is subject to ownership, prospective ownership, or possessory or contractual interest of a

Responsible Party or a Non-Responsible Party.

- J. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- K. "Responsible Party" shall mean:
 - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
 - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.
- L. "The Site" shall mean the facility located at located in the southwest quadrant of the intersection of Blanding Street and Williams Street in Columbia, South Carolina, and all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in

consumer use or any vessel, as defined in CERCLA Section 101 (28).

- M. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002).
- N. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. The site is the former location of the Central Correctional Institute, a maximum-security prison operated by the South Carolina Department of Corrections from the 1860s until 1994. The prison operated several industries at the facility in which hazardous chemicals were used during daily operations. Chemicals that were used at the Site include solvent-based paints, oils, and binding materials that were used in bookbinding, metal fabrication, and paint booth activities. During prison operations at the site, the western half of the site was occupied by a dense concentration of prison buildings while the eastern half was utilized for agricultural purposes and/or as an exercise/ball field. The prison closed and buildings abandoned in 1994; remaining site buildings were selectively demolished over time.
- B. A Phase I Environmental Site Assessment Report was conducted in 1994 (Clark's Engineering Services, Inc., 02/07/94). The Phase I noted six areas of potential concern requiring additional assessment to evaluate. These areas included (1) four underground storage tanks, (2) above ground storage tanks, (3) an area with PCB-containing transformers, (4) asbestos and lead based paint associated with building materials, (5) a drum storage area, and (6) a former coal

fired boiler plant. Soil assessment was conducted in each of these identified areas as reported in the Phase Two Environmental Assessment Report (Clark's Engineering Services, Inc., 7/07/94). The Phase Two Assessment results indicated no impact to soil in the vicinity of the transformers, but indicated impact to soil from organic compounds and metals at the drum storage area and coal fired boiler area. The Phase Two Report also recommended proper closure of the aboveground and underground storage tanks and appropriate lead and asbestos abatement prior to the demolition of buildings. After further assessment and closure of the aboveground storage tanks and underground storage tanks, these areas were given No Further Action Letters by the Department's Bureau of Water (12/16/98 and 10/10/01).

- C. Further environmental assessment of surface soils potentially impacted by residual lead particles during demolition of buildings, and soil and groundwater quality at the drum storage area and the former coal fired boiler plant was conducted by the City of Columbia through a Brownfields Assessment Grant from the United States Environmental Protection Agency. Assessment activities have included soil and groundwater sampling as reported in documents dated October 5, 2000 and September 17, 2001 (prepared by LawGibb Group) and December 11, 2002 (prepared by MACTEC). Based on information presented in these reports, Polynuclear Aromatic Hydrocarbons (PAHs) were present in soil in the vicinity of the drum storage area and the coal-fired boiler area above risk-based screening criteria for both industrial and residential uses. No impact to groundwater quality was identified at the drum storage area. However, attempts to collect groundwater samples from the coal-fired boiler were unsuccessful. Soil sampling was completed to satisfactorily identify the extent of impact at the drum storage area to

enable the development of a Corrective Action Plan. However, at the time of this assessment work, additional assessment was required to identify the extent of impact to soil in the vicinity of the coil-fired boiler area.

- D. In July 2003, the City of Columbia (City) entered into Responsible Party Voluntary Cleanup Contract (VCC) 03-5460-RP to address concerns at the site. The City agreed in the VCC to conduct additional soil assessment at the former coal-fired boiler to determine the full extent of soil contamination, and upon completion of this, to remediate impacted soil in the vicinity of the former drum storage and coal-fired boiler areas. In June 2004, the Department received the Soil Waste Characterization and Excavation Report performed by GAGE Group, Inc. for soil removal at the Former Central Correctional Institute Site. The report documented soil removal to residential standards. The Department accepted that report as successfully completing the terms of VCC 03-5460-RP, and subsequently issued a certificate of completion.
- E. Beach intends develop the Property as a new model for residential living in the downtown area of Columbia, to include a variety of outdoor amenities, public open spaces, and mixed uses including restaurants, shops, and offices. The residential development on the Property is anticipated to include an assortment of housing types and densities, from single-family detached homes to mid-rise waterfront condominiums.

3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, successors and assigns, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.

4. Beach CanalSide, LLC is a South Carolina limited liability company with its principal place of business located at 211 King Street, Suite 300, Charleston, South Carolina. Beach is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. Beach has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

5. The Department intends to conduct, at its expense, additional soil sampling across the Property (excluding areas where the previous assessment and removal activities were focused) to ensure its safety for Beach's future intended use of single family residential homes. This additional sampling will be conducted after Beach has graded the Property, and prior to any construction activities. Should the Department locate any areas of soil contamination that are in excess of residential standards, Beach shall take reasonable measures to ensure the safety of those areas. However, should no such measures be necessary, within thirty (30) days after the Department provides written notification of such, Beach shall submit to the Department a payment of five thousand dollars (\$5,000.00) for the Department's consideration for contribution protection. Additionally, as provided for by S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (D) (2005), Beach shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Beach will only be responsible for paying the oversight costs the Department incurs related to the Property that are associated with activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract and public participation. Oversight costs will not include the Department's personnel time for the additional soil sampling, nor the Department's time for review of the data collected. Should a removal be required, however, oversight costs related to that removal shall be charged to Beach. Payments will be due within thirty (30) days of receipt of the Department's invoice.

6. Two (2) years after the execution date of this Contract, Beach shall provide the

Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

7. Subject to the provisions of Paragraph 15 of this Contract, nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible party, or other entity not a signatory of this Contract.

8. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than Beach to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law. Beach acknowledges that it is acquiring property where response actions may be required.

9. Upon written notification to the Department, the rights and obligations of this Contract shall be assignable to a new purchaser, lessee, parent, subsidiary, or successor, but only to the extent that the new purchaser, lessee, parent, subsidiary, or successor has never been a Responsible Party at the Site.

10. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). Beach shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the Property as of the execution

date of this Contract. Beach shall also ensure that any subsequent leases, subleases, assignments or transfers of the Property occurring during Beach's ownership of the Property are consistent with this Paragraph.

11. Beach shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, Beach shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

12. The Department and Beach recognize that public participation is an important component of the Voluntary Cleanup Contract in order to further public acceptance of the project. The Department and Beach will undertake necessary steps to foster opportunities for the public to be aware of the project. Specific functions of each signatory party to the Contract are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002) as outlined below:
 - a. Upon signature of this Contract by Beach, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
 - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be

done solely at the Department's discretion.

- c. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

B. Beach agrees to enhance the public knowledge of the site response activities by:

- a. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
- b. The sign will state "Voluntary Cleanup Project by Beach CanalSide, LLC under Voluntary Cleanup Contract (06-5460-NRP) with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of Beach and the Department's Toll Free Telephone Number. All required

lettering on the sign must be of sufficient size to be legible with unaided normal eyesight from the point where the public will normally pass by the site without intruding onto the subject property.

- c. Within 10 days after erecting the sign, Beach shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. Beach agrees to revise the sign if the Department determines the sign is not legible.
 - d. Beach must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
 - e. In the event that any sign must be removed to accommodate building or grading activities, Beach shall replace the sign within two days. If the sign cannot be restored to the original location, Beach may relocate it to another location meeting the conditions specified above.
- C. All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by Beach.

13. The Department and Beach agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (2005): Beach, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

14. The Department and Beach agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "existing contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2005): Beach, its Non-Responsible Party lenders, signatories, parents, subsidiaries and successors. This limitation on liability does not apply to any contamination caused by Beach or its lenders, signatories, parents, subsidiaries, or successors. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

15. Upon successful completion of the terms of this Contract as referenced in Paragraph 5 above, Beach shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion of the Contract terms, the Department, under its authority to enforce CERCLA, 42 U.S.C. §§ 9601, et seq., pursuant to the HWMA, S.C. Code Ann. § 44-56200, will give Beach a Certificate of Completion that provides a covenant not to sue Beach, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns for Existing Contamination, except for releases and consequences that Beach causes. In consideration of this liability protection from the Department, Beach agrees not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

16. If hazardous substances in excess of residential standards exist at the Property after Beach has completed the actions required under Contract 06-5460-NRP, land use restrictions shall be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with Beach. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of Beach and witnessed, signed, and sealed by a notary public. Beach shall file this restrictive covenant with Clerk of Court in Richland County. The signed covenant

shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if: (a) additional remedial activities are carried out which meet appropriate clean up standards at that time; (b) a significant change in law requiring remediation occurs; or (c) circumstances change such that the restrictive covenant would no longer be applicable.

17. Beach specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, Beach is responsible and liable for any and all contamination it causes or contributes to the Site. Should environmental contamination neither previously identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on Beach to demonstrate to the Department's satisfaction that the contamination was not caused by Beach.

18. Beach and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should Beach elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of Beach's actions. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract; or (c) additional contamination of the Site caused by Beach.

19. If Beach provides the Department with false or incomplete information, or if Beach' business activities on the Property or use of the Property change such that they are inconsistent with the terms and conditions of this Contract, then the releases/contribution

protection extended to Beach, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns, shall become null and void.

20. Beach acknowledges that the Department will not grant or will revoke liability protection if Beach acquires the Contract or a Certificate of Completion by fraud, misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the terms of this Contract.

21. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight delivery service company or (iv) by telephone facsimile addressed to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

The Department:	Ms. Kristen H. Long Bureau of Land and Waste Management 2600 Bull Street Columbia, South Carolina 29201
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Beach:	Daniel J. Doyle Beach CanalSide, LLC c/o The Beach Company 211 King Street, Suite 300 Charleston, South Carolina 29404
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Any notice given hereunder shall be deemed delivered when, if sent by mail, the return receipt is signed or refusal to accept the notice is noted thereon or, if sent by recognized overnight courier when the notice is actually delivered or refused as reflected in

the courier company's delivery records or if sent via facsimile upon receipt of confirmation by the sender that the facsimile has been received.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

Patrick T. (Pat) Walker, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Legal Office

DATE: _____

BEACH CANALSIDE, LLC

Signature

DATE: _____

Printed Name and Title

DATE: _____

APPENDIX A

APPENDIX B